IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO. 9 AND 87 OF 2006.

WRIT PETITION NO. 9 OF 2006.

1. Suresh Baban Kakodkar,
son of Baban Bhikaji Shirodkar,
Businessman, aged 60 years,
and his wife;

2. Smt. Surekha Suresh Kakodkar,
aged 45 years, housewife,
both residing at House No.657,
Madhegal, Kakoda, Quepem, Goa. .... Petitioners.

Versus

1. State of Goa,
Through the Chief Secretary of
the Government of Goa, having
his office at Secretariat, Porvorim,
Bardez, Goa.

2. The Joint Mamlatdar – III,
Taluka of Quepem,Quepem, Goa.

3. Shri Nagesh Bhikaji Shirodkar,
son of Bhikaji Shirodkar, barber,
aged 80 years and his wife,

4. Smt. Girijabai Nagesh Shirodkar,
aged 70 years, housewife;
both residing at House No. 657,
Madhegal, Kakoda, Quepem, Goa.

5. Shri Damodar Vinayak Shirodkar,
son of Vinayak Bhikaji Shirodkar,
aged 32 years, barber,
and his wife:

6. Smt. Dipanjali Damodar Shirodkar
Kakodkar, aged 30 years,
housewife, both residing at

House No.657, Madhegal, Kakoda,
Quepem, Goa.

7. Shri Vishwas Vinayak Shirodkar,
son of Vinayak Bhikaji Shirodkar,
aged 40 years,
driver and his wife;

8. Smt. Vaishali Viswas Shirodkar,
aged 35 years, housewife,
both residing at Madhegal, Kakoda,
Quepem, Goa.

9. Shri Prasad Shambhu Shirodkar,
son of Shambhu Bhikaji Shirodkar,
aged 38 years, barber;
and his wife;

10. Smt. Pranjali Prasad Shirodkar,
aged 32 years, housewife, both
residing at House No.657,
Madhegal, Kakoda, Quepem, Goa. .... Respondents

Shri V.R. Tamba, Advocate for the Petitioners.

Shri M.D. Salkar, Addl. Government Advocate for the Respondents No.1 and 2.

Shri D.V. Patkar, Advocate for the Respondents No.3 and 4.

Shri Shivan Dessai, Advocate for the Respondents No.5 to 10.

WRIT PETITION NO. 87 OF 2006.

1. Shri Damodar Vinayak Shirodkar,
son of Vinayak Shirodkar, aged 32 years,
barber and his wife;

2. Smt. Dipanjali Damodar Shirodkar,
Kakodkar, aged 30 years
housewife, both residing at House No. 657,
Madhegal, Kakoda,

Quepem, Goa.

3. Shri Vishwas Vianayak Shirodkar,
@ Kakodkar, son of Vinayak B.
Shirodkar, aged 40 years, driver
and his wife;

4. Smt. Vaishali Viswas Shirodkar
@ Kakodkar, age 35 years, housewife,
both residing at Madhegal, Kakoda,
Quepem, Goa.

5. Shri Prasad Shambhu Shirodkar,
son of Shambhu Bhikaji Shirodkar,
aged 38 years, barber;
and his wife;

6. Smt. Pranjali Prasad Shirodkar,
aged 32 years, housewife,
both residing at House No.657,
Madhegal, Kakoda, Quepem, Goa. .... Petitioners.

Versus

1. State of Goa,
Through the Chief Secretary of
the Government of Goa, having
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3. Shri Nagesh Bhikaji Shirodkar,
son of Bhikaji Shirodkar,
barber, age 80 years,
and his wife:

4. Smt. Girijabai Nagesh Shirodkar,
aged 70 years, housewife,
both residing at House No.657,
Madhegal, Kakodka, Quepem,
Goa.

5. Shri Suresh Baban Kakodkar,
son of Baban Bhikaji Shirodkar,
Businessman,aged 60 years,
and his wife;

6. Smt. Surekha Suresh Kakodkar,
age 45 years, housewife,
both residing at House No.657,
Madhegal, Kakoda, Quepem, Goa. .... Respondents.

Shri Shivan Dessai, Advocate for the Petitioners.

Ms. R. Chodankar, Addl. Government Advocate for the Respondents No.1 and 2.

Shri D.V. Patkar, Advocate for the Respondents No.3 and 4.

Shri V.R. Tamba, Advocate for the Respondents No.5 and 6.

CORAM: R.M.S. KHANDEPARKAR, J.

DATE: 3rd MARCH, 2006.

ORAL JUDGMENT :

Heard. Rule. By consent Rule made returnable forthwith.

2. The petitioners challenge the Order dated 21st December, 2005 passed by the Mamlatdar in Case No. JM-III/MUND/DECL/01 and 02/2005 under Section 8A of the Goa, Daman and Diu Mundkar (Protection from Eviction) Act , 1975. By the impugned Judgment the learned Mamlatdar has dismissed the application solely on the ground that the respondent before the Mamlatdar had purchased the house in his capacity as mundkar

having been registered under Section 29 of the said Act and not by a stranger to the property. The learned Mamlatdar has held that if a person who is alien to the property purchases the property as a whole including the mundcarial house then only such a person steps into the shoes of the mundkar. If a person is registered as mundkar under Section 29 of the said Act, he does not step into the shoes of the batkar.

3. Few facts relevant for the decision are that the petitioners herein approached the Mamlatdar with the plea that the house which was purchased by the respondents was constructed by their common ancestor and the respondents along with the petitioners are occupying the said house in mundcarial capacity. However respondent No.1 was registered as witness under Section 29 of the said Act and taking advantage of the said situation the respondents purchased the area identified as the dwelling house from the owners of the property. Consequently it was the contention of the petitioners that the respondent no.1 has stepped into the shoes of the original batkar vis-a-vis the petitioners and the petitioners are entitled to purchase their share in the house under the provisions of the Mundkar Act. The respondents raised a preliminary objection regarding the maintainability of the petition on the ground that the respondent No.1 are purchasers of the mundcarial area, and that the respondent No.1 does not assume the character of batkar. The learned Mamlatdar accepting this

objection, rejected the application filed by the petitioners under Section 8A.

4. Bare reading of the impugned order discloses that the learned Mamlatdar without giving an opportunity to the petitioners to place before the Mamlatdar the necessary evidence in support of their contention, merely on the preliminary objection, non-suited the petitioners in the proceedings arising under the provisions of Section 8A for declaration of mundcarial rights of the petitioners. Once such an application is filed, the Mamlatdar will have to ascertain from the facts placed on record as to whether the applicant satisfies the ingredients of section 2(p) of the said Act as against the opponent and thereafter take a decision in that regard. Merely because the respondents raised objection that the purchase of the area along with the structure was in his capacity as mundkar, that therefore he does not step into the shoes of the batkar that itself would not be sufficient to non-suit the petitioners under Section 8A without getting opportunity to prove their case. Besides, it will depend on the facts of each case and the Mamlatdar will have to ascertain the same based on the material placed on record. In that regard fair opportunity has to be given to the applicant to produce whatever relevant material he wants to produce before the court in support of his claim. No such opportunity was given to the petitioners herein. Being so, the order is violative of the basic principles of natural justice and cannot be sustained.

5. The impugned order therefore needs to be quashed and the matter remanded to the Mamlatdar to give opportunity to the parties in support of their rival contentions and then proceed to decide the matter on merits.

6. Hence the petitions succeed and the impugned order is quashed and set aside. The matters are remanded to the Mamlatdar to decide the applications under Section 8A filed by the petitioners on merits and under the provisions of the Mundkar Act. Rule is made absolute in above terms with no order as to costs.

R.M.S. KHANDEPARKAR, J.

sl.